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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,181	03/10/2004	Dory Tuvim	9680.248US01	5290

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 MERCHANT & GOULD PC  
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 MINNEAPOLIS, MN 55402-0903

EXAMINER
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LUPINO, GINA M

ART UNIT	PAPER NUMBER
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3652

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/04/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/798,181

Applicant(s)

TUVIM, DORY

Examiner

Gina M. Lupino

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) 2 and 3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 03 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**I. Claims Cancelled**

1. The Examiner notes the Applicant has cancelled claims 2-3 in Applicants "Remarks" dated January 3, 2007. Thus, the rejections below only concern claims 1 and 4.

**II. Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over MCKENZIE (U.S. Patent No. 4,213,728) in view of CLARKE (U.S. Patent No. 3,536,161), and GOYARTS (U.S. Patent No. 3,874,719).
  - 2.1. With respect to claim 1, MCKENZIE discloses a trailer for transporting a container with lifting holes at each corner of a container (see Figure 4, column 3, lines 57-64, and column 6, lines 35-36), the trailer comprising:
    - 2.1(a) A U-shaped frame. See Figure 1, 7 and column 2, line 67.
    - 2.1(b) Where the front of the frame has a means for attaching 3 the trailer to a tractor. See Figures 1, 2, 7, 8 column 3, lines 48-49, and column 4, lines 15-17.
    - 2.1(c) The frame is shaped and sized to receive a container within it. See Figures 1,7 and column 2, lines 56-57, 60, 65-66, column 3, lines 57-64, and column 4, lines 43-44.
    - 2.1(d) Wheels 4 on each side of the frame. See Figures 1-2, 7-8.
    - 2.1(e) A plurality of retractable lifting members (See Figures 2, 4, 8 and column 4, line 23), where each member is:

2.1(e)(i) Positioned proximate a lifting hole on the container when the container is received within the frame. See Figures 1,2, 4 and column 4, lines 20-26.

2.1(e)(ii) Movable between an inoperative position when members are disengaged from the lifting holes, and an operative position when the members engage the lifting holes. See Figures 1,2, 4 column 3, lines 57-64, and column 4, lines 21-35.

2.1(e)(iii) Extendable to lift the container (See column 4, lines 27-35),

2.1(f) where each vertical beam includes a vertical slot (see Figures 2, 4), and

2.1(g) a means for controlling the plurality of lifting members. See column 2, lines 61-62, and column 3, lines 4-9.

2.2. However, MCKENZIE fails to teach:

2.2(a) Lifting members housed in a vertical beam fastened to the frame,

2.2(b) Front and rear vertical beams each interconnected at a top portion with separate top cross members,

2.2(c) Lifting members include a hydraulic cylinder with a lifting hook biased toward a position extending from the frame,

2.2(d) When the lifting members are in an inoperative position, the cylinders are retracted,

2.2(e) Lifting members with inwardly biased lifting hooks

2.2(e)(i) capable of being biased toward a position extending from the frame,

2.2(e)(i) located within a vertical beam below the bottom end of a slot when lifting members are in an inoperative position,

2.2(e)(ii) capable of deploying outside slot and contacting a container's lifting hole, when the when the cylinders are extended, and

2.2(e)(iii) capable of engaging a lifting hole and lifting a container until the top portion of the container contacts a bottom portion of each top cross member.

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2.3. CLARKE teaches:

2.3(a) Lifting members housed in vertical beams 15-18, fastened to a frame 10a-c. (see Figures 1-3 and column 1, lines 66-68, 73-75, and column 2, lines 1-7) and front 15, 18 and rear beams 16, 17 interconnected at a top portion with separate top cross members 11, 10, respectively. Therefore, it would have been obvious to one of ordinary skill in the art to modify MCKENZIE with lifting members, front and rear beams, and the top cross members of CLARKE in order to house lifting members in vertical beams interconnected by front and rear beams.

2.3(b) Lifting members include a hydraulic cylinder 28 and when the members are in an inoperative position, the cylinders are retracted. See Figure 2 and column 2, lines 3-4. Therefore, it would have been obvious to one of ordinary skill in the art to modify MCKENZIE with the hydraulic cylinders of CLARKE in order to retract the beam.

2.4. GOYARTS teaches:

2.4(a) Inwardly biased lifting hooks 194 that:

2.4(a)(i) Are biased toward a position extending from the frame and located within a beam 66 when lifting members are in an inoperative position,

2.4(a)(ii) deploy outside of a slot and contact a container's lifting hole, when the when the cylinders 204 are extended, and engage a lifting hole and lift a container

2.4(a)(iii) See Figure 5 and column 7, lines 32-34, 39-44.

2.4(b) Therefore, it would have been obvious to one of ordinary skill in the art to modify the lifting members and vertical beams of MCKENZIE with the inwardly biased lifting hooks of GOYARTS in order to hook and lift a container until the top portion of the container contacts a bottom portion of each top cross member.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over MCKENZIE (U.S. Patent No. 4,213,728) in view of CLARKE (U.S. Patent No. 3,536,161), and GOYARTS (U.S. Patent No. 3,874,719) and TAYLOR (U.S. Patent No. 3,724,695).

3.1(a) With respect to claim 4, MCKENZIE teaches the trailer discussed above, but fails to teach a rear gate. TAYLOR teaches a trailer 10 with a rear gate. See Figures 1, 3 and column 4, lines 14-21. Therefore, it would have been obvious to one of ordinary skill in the art to modify the trailer of MCKENZIE with the rear gate of TAYLOR.

#### **Response to Applicant's Arguments**

**Applicant's arguments entered January 3, 2007 have been fully considered.**

**4. Applicant's arguments with respect to the rejection of claim 3 under 35 USC § 112 are persuasive.**

**5. Applicant's arguments with respect to the rejection of claim 1 under 35 U.S.C. 102(b) are not persuasive.**

**5.1. With respect to claim 1, Applicant argues MCKENZIE does not teach:**

**5.1(a) Lifting members able to lift the container since the sliding buffers only retain the container and the container is lifted by an independent fork lift.** However, the Examiner disagrees with the Applicant. Claim 1 solely requires "a plurality of retractable lifting members". Claim 1 fails to recite any other claim language providing any more details about the lifting members. Limitations from the specification or from the Applicant's Remarks will not be read into claim 1. Thus, as discussed above, MCKENZIE teaches this limitation, as it is plainly recited in claim 1.

**5.1(b) A vertical beam in the trailer.** However, the Examiner disagrees with the Applicant. Figures 2 and 4 show a vertical member with a slot on the bottom of the member, as discussed above. Therefore, MCKENZIE teaches this limitation of claim 1.

**6. Applicant's arguments with respect to the rejection of claims 2-4 under 35 U.S.C. 103(a) are not persuasive.**

**6.1. With respect to claim 2, Applicant argues CLARK does not teach:**

**6.1(a) Lifting members housed in vertical beams.** However, the Examiner disagrees with the Applicant. As discussed above, claim 2 fails to recite any other claim language providing any specific details about the lifting members' position with respect to the beams, such as, for example, "within the hollow of the lifting members". Figures 1-3 of CLARKE show lifting members accommodated by vertical beams. Thus, CLARK teaches this limitation of claim 2.

**6.1(b) Lifting members with hooks biased inward the frame.** The Examiner agrees with the Applicant. CLARKE does not teach the lifting members have hooks. Thus, the Examiner has provided the KELE reference, as discussed above, to show it would have been obvious to one of ordinary skill in the art to modify MCKENZIE, as modified by CLARK, with the lifting hooks of KELE, in order to lift the container.

**6.2. With respect to claim 3, Applicant argues KELE does not teach or suggest:**

**6.2(a) Lifting members housed in vertical beams.** This argument is irrelevant. CLARK, not KELE, teaches lifting members housed in vertical beams, as discussed above.

**6.2(b) Lifting members that include a hydraulic cylinder with a lifting hook biased toward a deployed position extending from the frame.** This is also irrelevant. CLARK, not KELE, teaches lifting members that include a hydraulic cylinder housed in vertical beams, as discussed above. KELE is only to show it lifting members with hooks that are capable of being biased toward a position extending from the frame, as discussed above. Furthermore, this argument is now moot in light of the GOYARTS reference discussed above.

6.2(c) **A vertical beam with a vertical slot where the lifting hooks are within the beam in an inoperative position and deploy outside the slot in the operative position.** First, CLARK, not KELE, teaches vertical beams, as discussed above. Second, KELE teaches lifting hooks within a beam, where the lifting hooks can be deployed or retracted, as desired. Furthermore, this argument is now moot in light of the GOYARTS reference discussed above.

6.3. **With respect to claim 3, Applicant also generally argues the features taught by the cited references are completely different from one another and the Examiner threw references together to render claim 3 obvious.** However, the Examiner disagrees with the Applicant.

6.3(a) First, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. Here, all three references are each reasonably pertinent to the particular problem with which the applicant was concerned. MCKENZIE teaches a trailer capable of transporting a container, as required by amended claim 1. CLARK teaches a frame with lifting members in a series of vertical beams, as required by amended claim 1. Finally, KELE teaches a lifting device on a frame that uses hooks to lift heavy objects. Therefore, the MCKENZIE, CLARK, and KELE references suffice as basis for rejection of the claimed invention because they are each reasonably pertinent to the particular problem with which the Applicant was concerned in the claimed invention.

6.3(b) Second, in response to applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention



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where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Here, CLARK teaches a lifting assembly, as discussed above, in order to lift a heavy object. KELE teaches lifting members with lifting hooks in order to lift a heavy object. Therefore, both the CLARK and KELE references were properly used to meet the threshold of the test for obviousness within the meaning of 35 U.S.C. 103(a).

**6.4. With respect to claims 1-4, Applicant also generally argues the cited references fail to teach or suggest retractable lifting hooks that move in and out of the vertical beams and are retracted in the beams when inoperative. However, this argument is now moot in light of the GOYARTS reference discussed above.**

**Conclusion**

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
8. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina M. Lupino whose telephone number is (571) 272-6557. The examiner can normally be reached on 9:30am - 5:30pm EST.
10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

12. GML

  
GENE O. CRAWFORD  
SUPERVISORY PATENT EXAMINER